



Mwatela v Voi Development Company Limited & another (Environment and Land Miscellaneous Case E011 of 2025) [2026] KEELC 1997 (KLR) (Environment and Land) (14 April 2026) (Ruling)

Neutral citation: [2026] KEELC 1997 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND MISCELLANEOUS CASE E011 OF 2025**

EK WABWOTO, J

APRIL 14, 2026

BETWEEN

HON CALIST MWATELA PLAINTIFF

AND

VOI DEVELOPMENT COMPANY LIMITED 1ST RESPONDENT

LAND REGISTRAR 2ND RESPONDENT

RULING

1. This ruling determines the 1st Respondent’s preliminary objection dated 12th March 2026 to the effect that the Applicant’s Miscellaneous Application dated 25th September 2025 offends section 7 of the *Limitation of Actions Act* (Cap. 22) in that the cause of action arose in 1993 (more than 33 years ago) and is therefore time-barred.
2. The Applicant commenced these proceedings vide the Miscellaneous Application dated 25th September 2025 seeking the following orders:
 - a) That the Application be certified urgent and heard ex-parte in the first instance.
 - b) That this Honourable Court be pleased to compel the Respondent to produce the Original RTA Title C.R. 13016.
 - c) That this Honourable Court do compel the Director of the Respondent Company to execute the transfer forms.
 - d) That in the alternative this Court do empower the Deputy Registrar to execute the transfer forms for purposes of effecting the transfer.



- e) That the 2nd Respondent do issue title documents with respect to the plots owned by the Applicant.
- f) That costs be borne by the 1st Respondent.
3. By the directions of this Court, the Application was directed to be canvassed by way of written submissions. The Applicant filed submissions dated 7th April 2026 while the Respondent filed submissions dated 8th April 2026. No written submissions were filed by the 2nd Respondent and neither did they participate in these proceedings.
4. The Respondent submitted on two issues. First, whether the claim is subject to the Limitation of Actions Act. It was argued that the gist of the application is that it seeks to enforce a sale agreement entered into on 13th January 1993 and hence the same is contrary to section 7 of Cap. 22. Reliance was placed on several cases including *Sohanaldurgadass Rajput & Another v Divisional Integrated Development Programmes Co. Ltd* [2021] eKLR. It was also submitted that fraud has not been pleaded anywhere in the said application and hence there is no exception to the limitation. The 1st Respondent further contended that even if the use and occupation of the land has been admitted by the Applicant, the claim is still time-barred. Secondly, as to whether the defence of estoppel is applicable, it was submitted that the Applicant never raised any issue of promissory representation in his application, the same having surfaced only in his written submissions and hence cannot be applicable as it is misplaced.
5. The Applicant opposed the preliminary objection and submitted on the following issues; First, whether the application is one for recovery of land and whether the same is barred by section 7 of Cap. 22. It was argued that the prayers in the application do not point to any action for recovery of land, the Applicant is in possession of the land and the 1st Respondent has never doubted his occupation and ownership. The Applicant only seeks orders to compel the 1st Respondent to execute transfer documents and facilitate issuance of a title. Second, even if this Court were to find that the Limitation of Actions Act applies, the 1st Respondent is estopped from relying on any limitation period by virtue of their own conduct pursuant to the provisions of section 39 of Cap. 22. It was further submitted that by acknowledging the Applicant's claim and restraining the Applicant from taking any legal action, the 1st Respondent made a clear promissory representation that the matter would be resolved without recourse to litigation. The Applicant, relying on this representation, refrained from filing suit within the period now sought to be relied upon by the 1st Respondent.
6. According to the Applicant, it would be wholly inequitable and contrary to the principles of equity and good conscience to allow the 1st Respondent to benefit from a limitation period that their own conduct caused the Applicant to miss. The doctrine of promissory estoppel operates precisely to prevent such injustice. The 1st Respondent cannot approbate and reprobate; they cannot on one hand urge the Applicant not to act, and on the other hand turn around and rely on the effluxion of time as a shield against the very claim they promised to resolve. Such conduct cannot be sanctioned by this Court.
7. The Court was urged to dismiss the preliminary objection.
8. The sole issue for determination is whether the Application is time-barred. A preliminary objection on limitation is competent as it raises a pure point of law that, if upheld, disposes of the entire matter without the need for a full hearing on the merits. Such objections go to the jurisdiction of the Court and must be determined at the earliest opportunity.
9. The Application is founded on a sale agreement dated 13th January 1993. The prayers seek specific performance thereof by way of compulsion to produce the original title, execution of transfer forms



(or empowerment of the Deputy Registrar to sign the same), and issuance of title documents by the 2nd Respondent.

10. Section 4(1) of the *Limitation of Actions Act* provides that actions founded on contract and actions claiming equitable relief (including specific performance) for which no other period is provided shall not be brought after six (6) years from the date the cause of action accrued. Section 7 of the Act, on the other hand, bars actions to recover land after twelve (12) years from the date on which the right of action accrued. “Land” is defined broadly to include any interest therein, and a claim for specific performance of a contract for the sale of land, which seeks to perfect legal title through execution of transfer instruments and issuance of title documents, falls squarely within the ambit of an action to recover land or an interest therein.
11. Whether the claim falls under section 4 or section 7, the Application was filed on 25th September 2025 approximately 32 years and 8 months after the sale agreement. The cause of action accrued in or about 1993. The claim is therefore statute-barred on the face of the pleadings under either provision.
12. This Court has considered the position taken by the 1st Respondent that, even if the use and occupation of the land has been admitted by the Applicant and indeed not disputed by the Respondent, the claim is nevertheless time-barred. While the Applicant’s long-standing possession is a relevant factual consideration and may, in appropriate circumstances, give rise to an equitable interest or support a claim for adverse possession under sections 13 and 38 of the Act (where title may be extinguished after 12 years of uninterrupted adverse possession), it does not alter the legal character of the present Application. The relief sought is not declaratory of existing possession nor a claim for adverse possession; it is a positive claim for specific performance of the 1993 sale agreement, including compulsory production of the original title, execution of transfer instruments, and issuance of fresh title documents. Such relief constitutes enforcement of a contractual right that accrued decades ago.
13. This position is consistent with Kenyan jurisprudence that treats claims for the perfection of title or specific performance arising from land sale agreements as subject to the strict limitation periods under the Act. 1st The Respondent’s reliance on Sohanaldurgadass Rajput case (Supra) is apposite. The Applicant’s argument that this is not an action “to recover land” because he is already in possession is accordingly rejected. The Application expressly seeks the production of the original title, execution of transfer instruments, and issuance of fresh title documents. This is a classic claim for specific performance of a contract for the sale of land, which perfects legal title. Kenyan courts have consistently treated such claims as falling within the limitation regime applicable to land transactions, and the passage of over 33 years renders the claim time-barred in any event.
14. The statutory limitation period is not suspended or extinguished merely because the purchaser has been allowed to remain in occupation. To hold otherwise would undermine the legislative policy of finality and certainty in land dealings, as enshrined in the *Limitation of Actions Act*, which exists to prevent the indefinite threat of stale claims and to promote diligence in the assertion of rights. The 1st Respondent’s concession on occupation therefore does not provide a defence to the plea of limitation; it merely confirms the status quo without reviving a stale cause of action.
15. No exception under the Act (such as fraud, mistake, or disability under sections 20–28) has been pleaded in the Application. The absence of any plea of fraud is fatal to any attempt to invoke the extended limitation periods provided for concealed causes of action.
16. While the Applicant has raised promissory estoppel in his written submissions by placing reliance on Section 39 of Cap 22 alleging that the 1st Respondent acknowledged the claim, restrained litigation, and promised amicable resolution, No such facts or plea of estoppel appear in the Miscellaneous



Application itself. A preliminary objection is determined strictly on the face of the pleadings. Issues not pleaded cannot be introduced through submissions alone to defeat a point of law that is apparent on the record. Courts have consistently held that section 39 estoppel is not lightly presumed and must be specifically pleaded with particulars; bare assertions in submissions are insufficient.

17. In view of the foregoing, it is the finding of this court that the 1st Respondent's preliminary objection dated 12th March 2026 is merited and the same is upheld. The Applicant's Miscellaneous Application dated 25th September 2025 is time-barred and is hereby struck out in its entirety.
18. On the question of costs, although costs normally follow the event, and the 1st Respondent has succeeded, this Court exercises its discretion under section 27 of the *Civil Procedure Act* (Cap. 21) to order that each party bears own costs of the Application and the preliminary objection.
19. These proceedings having been commenced vide a Miscellaneous cause it is hereby directed that this file be marked as closed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 14TH DAY OF APRIL 2026.

E. K. WABWOTO

JUDGE

In the presence of:-

Ms. Ngure for the Applicant.

Mr. Onduso for the 1st Respondent.

N/A for the 2nd Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.

